

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF APPEAL

AND

PURSUANT TO ARTICLE 5(B)(1)(b) OF THE JUDICIAL AUTHORITY LAW BEING DUBAI LAW NO. 12 OF 2004 (AS AMENDED)

BY

THE DUBAI INTERNATIONAL FINANCIAL CENTRE AUTHORITY

Applicant

SUBMISSION IN SUPPORT OF REQUEST FOR INTERPRETATION

1 Further to the instructions provided to by the Deputy Registrar Nour Hineidi (the **Deputy Registrar**) via email dated 2 March 2020 and in accordance with paragraphs 7 and 8 of the Deputy Registrar's Order dated 12 February 2020, we hereby make submissions on behalf of the Society of Trust and Estate Practitioners (Arabia) NPIO (**STEP Arabia**), in support of the proposed interpretation of the DIFC Laws specified in the Request for Interpretation (the **Request for Interpretation**)¹ made in the abovenamed case and respectfully request that STEP Arabia be formally recognised and included as an Interested Third Party to the proceedings.

The Society of Trust and Estate Practitioners (STEP)

2 STEP is a worldwide professional association for advisors that help families plan for their futures across generations. STEP currently has over 100 branches and chapters cross 96 countries, with membership of over 21,000² drawn from a range of professions, including lawyers, accountants, trust companies, banks and other specialists. STEP promotes best practice, professional integrity and provides education to members in all aspects of wealth management and future planning, from drafting wills or advising family businesses, to helping international families structure their wealth using trusts and foundations and protecting vulnerable family members.

3 STEP takes a leading role in explaining its members' views and expertise to governments, tax authorities, regulators and the public, and works with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

¹ Letter application of the Dubai International Financial Centre Authority to the Chief justice of the DIFC Courts filed on 2 January 2020 asking the Chief justice to determine questions of interpretation of certain DIFC Laws

² Data provided STEP's website (<https://www.step.org/where-we-are>) as at 9 March 2020

- 4 In addition, STEP has historically acted as a forum for professionals advising clients with proven solutions such as trusts and foundations. However, these solutions have tended to focus on “western” jurisdictions where these structures have long been recognized.
- 5 It is apparent that clients in the Muslim world, whether Muslim or not, also face issues relating to asset protection and succession planning. This is true both for those individuals with assets located in a Shariah law jurisdiction, as well as those who wish to implement Shariah compliant structures for assets in non-Shariah law jurisdictions. STEP Arabia, is a branch of STEP representing STEP members in the Gulf region with over 120 members and a committee based in Dubai seeks to address such issues faced by individuals and families of all faiths and nationalities in the region.
- 6 To further its objectives in the region, in 2014, STEP Arabia formed the Islamic Assets and Legacy Planning Group (**IALPG**), a satellite special interest group under STEP's International Client global Special Interest Group that operates as a sub-committee of and reports to STEP Arabia. IALPG's mission is to help advisors better advise their clients with assets and succession planning requirements in the Islamic world. It aims to achieve this through a series of seminars, presentations and conferences which create awareness, educate, and provide solutions on some of the issues faced by Muslims.

STEP Arabia's interest in and support of the Request for Interpretation

- 7 STEP Arabia and its members have a unique interest in the subject matter of these proceedings as it will have clear and direct implications on the furtherance of its stated objectives. STEP Arabia's members, who play a key role in disseminating knowledge regarding succession planning options in the Gulf region and further afield, welcomed the new DIFC Trust Law (DIFC Law No 4. of 2018) (the **Trust Law**) and DIFC Foundations Law (DIFC Law No.3 of 2018) (the **Foundations Law**). With the Trust Law being an improvement on the 2005 version of the DIFC Trust Law (DIFC Law No.11 of 2005) and the introduction and recognition of foundations, the DIFC statutes are now sufficiently flexible to be adapted to the needs of most of families wishing to create a dynastic wealth holding structure.
- 8 Whilst it has been the generally held view of STEP Arabia that the DIFC Trust Law and latterly the DIFC Foundations Law are flexible enough to satisfy the demands of many clients, the majority of STEP Arabia's members report that, to date, their clients generally prefer to establish their wealth holding structures outside the region. This naturally begs the question: why?
- 9 It is STEP Arabia's view that this is in large part due to a perceived uncertainty regarding the robustness of DIFC trusts (and latterly foundations). There remains a sufficient level of scepticism amongst would be settlors and founders regarding key aspects of the creation and administration of DIFC trusts and foundations that continues to act as a barrier to their wider adoption. The areas giving rise to such doubts are well elucidated in the Request for Interpretation (and whilst STEP Arabia does not believe further detailed commentary is necessary in this regard, we would be happy to provide any supplementary information to support the Request for Interpretation if the Court of Appeal deems it necessary).
- 10 In our view, the Court of Appeal's responses to the questions posed in the Request for Interpretation will provide welcome legal certainty to the market which we believe will in turn lead to more advisors recommending DIFC structures to their clients and more

individuals and families choosing to utilise the Trust Law and Foundations Law when establishing their wealth holding structures.

- 11 For the reasons given above, STEP Arabia supports the Request for Interpretation including the proposed answers in full.

Yours faithfully



Trowers & Hamlin
For and on behalf of
Society of Trust and Estate Practitioners (Arabia) NPIO

9 March 2020